

**CITY OF BOISE
DEPARTMENT RECOMMENDATION**

TO: Tina McBride, Purchasing Agent and/or Mayor and City Council

FROM: Brent Ho

DEPT: Fire

DATE: 18 January 2008

SUBJECT: Purchase hazardous materials detection equipment

BACKGROUND: *Insert description of efforts to this point to solicit goods or services under normal purchasing process.*

Only RAE Systems, as the manufacturer, offers the AreaRAE, a wireless multi-gas and radiation monitor. AreaRAE monitors are Class 1 Division 2 hazardous area approved and each can be equipped with up to five sensors (a PID, various toxic gas sensors and a gamma radiation sensor). Each AreaRAE system can monitor up to 32 remotely located AreaRAE monitors or other devices equipped with a RAELink modem.

This is a sole source request due to the fact: Sales are factory direct and quotations are furnished by RAE Systems from San Jose, CA. Manufacturing shall be performed by RAE Systems in San Jose, CA. Please do not hesitate to contact me at (408) 952-8248, if there are any questions, comments or concerns as to the authenticity of this document.

FISCAL IMPACTS: This expenditure is funded from normal funds and there are sufficient appropriations for this contract available in account 1810717 - 14005860061 for this expenditure.

RECOMMENDATION: Fire Department requests that you accept RAE Systems as a sole source provider of the requested expenditure at the cost of \$12150.00.

ACTION REQUIRED: Purchasing Agent approval or Mayor and City Council.

CITY OF BOISE SOLE SOURCE DOCUMENTATION SHEET

DEPARTMENT: Fire**DATE:** 18 January
2008**ITEM TO BE PURCHASED:** See attached**VENDOR:** RAE Systems**MODEL NO.:** 029-5001-200_____
DEPT. HEAD OR DESIGNEE SIGNATURE_____
PRINT NAME_____
DATE

I. JUSTIFICATION: *In order for purchases to be classified as a Sole Source, Idaho Statutes require that only one source is reasonably available and may include, but is not limited to, one of the following criteria. Please provide information on determining that only one source is available and choose one of the following. A complete explanation for the justification is required below.*

- ☐ Purchase where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. This selection will require a complete explanation that includes any economic criteria taken into consideration .
- ☐ Purchase where a sole supplier's item is needed for trial use or testing of a new product. This selection is primarily meant for technological improvements.
- ☐ Purchase of mass-produced movies, videos, books or other copyrighted materials.
- ☒ Purchase of property for which it is determined there is no functional equivalent.
- ☐ Purchase of products, merchandise or trademarked goods for resale at a City facility. Please include any documentation of research of your search for competitive suppliers.
- ☐ Purchase where competitive solicitation is impractical, disadvantageous or unreasonable under the circumstances. This selection will require a complete explanation of the impracticality, disadvantageous nature or why the purchase is unreasonable. A formal explanation should include an economic justification.

II. EXPLANATION: *Provide a detailed explanation for the chosen justification from the above list.*

The Boise Fire Department has established a professional and respectful working relationship with RAE Systems over the past three plus years. The local distributor, Safety and Supply, and its local representative, Tom Bester, have mutually been invaluable to the Boise Fire Department Hazardous Materials Team. The sales and repair requests that have been directed to Tom have been addressed without question. The response to our numerous needs and requests have been without fail. Safety and Supply has began to transfer another remote location closer to Boise; it will be in Nampa.

Boise Fire Department currently owns and operates equipment previously purchased from RAE. The compliment of additional equipment will further our abilities to respond to and determine at a faster rate the means to control or contain the substance that is causing the emergency. Additionally, the exact equipment (in greater quantity) is already being used by the 101st Civil Support Team (CST). Regional Response Team #3 (Caldwell) will be moving in the same direction as Boise Fire Department Regional Response Team #4. Having the resources at three different locations will compliment one another in the event of significant event (ie.- Special Olympics). Also, since each team will have similar equipment, each team will not have to rely on another agency if the need arises.

The basis of the equipment is to place the equipment in the projected 'Hot Zone' and not personnel. The system, when in operation, will be able to determine the 'plume' of the hazardous material without placing people in the potential/possible 'plume' itself. The wireless attachments will transmit back to the controller

where the 'plume' is and if/when it shifts. By doing so, the zones can be addressed in a more rapid fashion and modifications to the action plan can be implemented sooner to protect life and property more effectively. With the equipment, the results are instant. Additional risk to life is reduced; both responders and civilians. Instead of placing members in the potential 'plume' and risking the life threat to those members, the instruments monitor, record and transmit the information to the command post. The personnel, that would have been assigned to perform the tasks this equipment can, will be better utilized by the command post. Having the ability to use this equipment instead of people, more crucial assignments can be performed to contain or confine the substance and allow the situation to be return to normalcy in a lesser amount of time; thereby saving lives, environment and money.

III. OTHER SOURCES: *Name a minimum of two other sources whose products you have evaluated and why they do not meet your needs.*

A. Vendor: None

Technical Deficiency: None

B. Vendor: None

Technical Deficiency: None

NOTE: Please attach any additional information or documentation of your other sources or justification.



Rae Systems
3775 North First Street
San Jose, CA 95134
Phone: (408) 952-8200
Fax: (408) 952-8487
Email: systemsales@raesystems.com

Quotation: IS071113100315.02

Thursday, December 27, 2007

Chief Brent Ho
Boise Fire Dept.
150 N Capitol Blvd.
Boise, ID 83701 USA

Thank you for your recent request for a quotation for RAE Systems products.

Founded in 1991, RAE Systems is a leading global developer and manufacturer of rapidly deployable gas, vapor and radiological detection equipment for homeland security and industrial applications. Headquartered in San Jose, CA, RAE Systems products include a full line of portable, wireless and fixed monitors offering a wide variety of gas sensors as well as gamma and neutron radiation sensors for the detection of hazardous environments.

RAE Systems products are used extensively in industrial and government hazardous environment detection programs in over 65 countries. As of 2005, there are more than 500 AreaRAE system users in the United States including over 2,500 AreaRAE monitors, 400 wireless portables, and over 300 Rapid Deployment Kits (RDKs).

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The RDK System includes:

- Host Controller with laptop including pre-installed software constructed for fast "open and operate" usability
- Compact Raelink2 Repeater
- Four AreaRAE monitors with four spare Li-ion battery packs, four alkaline battery adapters optional calibration Kit and various accessories
- Rugged military grade case with padded inserts and custom foam

Sales are factory direct and quotations are furnished by RAE Systems from San Jose, CA. Manufacturing shall be performed by RAE Systems in San Jose, CA. Please do not hesitate to contact me at (408) 952-8248, if there are any questions, comments or concerns as to the authenticity of this document.

Sincerely,

Raul Guevara
RAE Systems

CONFIDENTIALITY NOTICE

The information contained in this facsimile message is privileged and confidential information intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any dissemination, disclosure, copying or distribution of this telecopy is strictly prohibited. If you received this communication in error, please immediately notify us by telephone and return the original message and documents to us at the above address via first class mail. Thank you.



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Quotation: IS071113100315.02

To: Boise Fire Dept.
150 N Capitol Blvd.
Boise, ID 83701 USA

Attn: Chief Brent Ho

Phone: 208-433-5687

Extn:

Fax:

Cell: 208-869-0911

Email: bho@cityofboise.org

Issued: Thursday, December 27, 2007

Expiration Date: Wednesday, March 26, 2008

Rep Contact:

Lloyd Stading

Phone: 206-910-5309

Fax:

Email: lstading@raesystems.com

Project: Boise Fire Dept.

Item	Qty	Part Number	Description	Price/Unit	Total
1. 1	1	029-5001-200	<u>Host</u> ProRAE Remote Basic Host Controller Software Package (does not include laptop PC - PC). Can be used to control up to 32 wireless detectors. Includes RAELink2 Modem and standard antenna, with 12' antenna cable.	\$2,000.00	\$2,000.00
1. 2	1	029-9001-000	<u>ProRAE Remote GPS Upgrade</u> ProRAE Remote GPS With GPS enabled units active, the ProRAE Remote will display latitude and longitude information for the detectors. Required for GPS equipped units.	\$2,000.00	\$2,000.00
1. 3	4	029-5002-200	<u>RAELink2 Remote Package</u> RAELink2 Remote Package Includes a RAELink2 modem with all required accessories for use with a wireless certified ppbRAE plus, MultiRAE Plus, or MiniRAE2000	\$2,000.00	\$8,000.00
1. 4	1	Shipping	<u>Shipping</u> Shipping and Handling-Rates may change due to quantity, ship method, or final destination.	\$150.00	\$150.00

Section Total: \$12,150.00

Grand Total: \$12,150.00

At the date of this quotation RDK System Packages and RDK Host Kits include the following personal computer: LENOVO THINKPAD T60 1951 - CORE DUO T2400 1.83 GHZ - 14.1" TFT. Product availability may cause RAE Systems to substitute a personal computer of similar performance.

FOB San Jose: Buyer is fully responsible for all incurred, freight, insurance, hazardous material handling, customs and duties. Price quoted does not include applicable sales taxes.

Training: RAE Systems, or a Certified AreaRAE Representative, will provide up to 4 hours of free hands-on "Train the Trainer" training at the user's site or a mutually agreed upon location within 60 days after shipment. After 60 days our obligation to provide free training automatically expires. Additional on-site training can be purchased at \$1500 a day plus expenses. With every AreaRAE or RDK order, RAE Systems provides an extensive, interactive training course on the use and maintenance of the AreaRAE monitor. This course is provided on a CD that can be run on most personal computers.



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Purchase Order Requirement: A signed quotation does not constitute an official purchase order. In order to ship, we require an approved purchase order complete with details (purchase order number, billing and ship to address, as well as accounts payable contact) Electronic and fax formats are acceptable.

Accepted By

Date of Acceptance

Shipping Address:

Billing Address:

Required Delivery Date: _____

Method of Delivery: _____

PO#: _____

Comments: _____



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EXHIBIT 1. GENERAL TERMS AND CONDITIONS OF SALE (PR 12/17/98)

1. Acceptance: Rae Systems desires to provide its customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair RAE System's ability to provide such service. Accordingly, products furnished and services rendered by RAE Systems are sold only on the terms and conditions stated herein, notwithstanding any terms and conditions on Buyer's agreement to RAE System's Terms and Conditions of Sale unless otherwise specifically agreed to in writing by RAE Systems. In the absence of such agreement, commencement of performance and/or delivery shall be for RAE Systems convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any Product or service shall be deemed acceptance of the terms and conditions stated herein. RAE Systems failure to object to any term or condition contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions. Notwithstanding the foregoing, however, stenographic and clerical errors are subject of revision and correction. All contracts for the sale of products shall be construed under and governed by the law of the State of California. Each product furnished by RAE Systems shall be deemed accepted by Buyer unless notice of defect or nonconformity is received in writing within thirty (30) days of delivery thereof.

2. Quotation and Prices: All quotations are subject to the terms and conditions stated herein as well as any additional Terms and Conditions that may appear on the face hereof. In the case of a conflict between the terms and conditions stated herein and those appearing on the face hereof, the latter shall control. RAE Systems prices and quotations are subject to the following:

- a) All published prices are subject to change without notice.
- b) Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after date thereof and constitute offers provided that, budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon RAE Systems.
- c) All shipments will be billed at prices in effect on the date of acceptance of Buyer's order.
- d) Unless otherwise stated in writing by RAE Systems, all prices quoted shall be exclusive of transportation fees, insurance's, taxes (including without limitation, any use tax, sales tax or similar tax), license fees, customs fees, duties and other charges related, thereto, and Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and shall hold RAE Systems harmless therefrom.
- e) Prices quoted are for products only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than RAE Systems standard tests and other than normal domestic commercial packaging unless expressly agreed to in writing by seller.

3. Payment: Unless otherwise agreed to in writing, payment shall be paid net 30 days from invoice. Should custom work be involved, orders shall be accompanied by a non-refundable 50% payment of total contract price with an additional 30% due upon product acceptance at the RAE Systems factory, and the final 20% is due 30 days after shipment. International orders must be accompanied by an irrevocable letter of Credit confirmed through a U.S. bank acceptable to RAE Systems and to be drawn at sight when presented proper documents consisting of (1) signed commercial invoice in triplicate and (2) clean airway bill for the Product. Or, wire transfer of funds must be received before shipment (International). Past due balances shall be subject to a service charge of 1.5% per month, but not more than the amounts allowed by law. Partial shipments will be billed as made and payments are subject to the above terms. RAE Systems may cancel or delay delivery of products in the event Buyer fails to make prompt payment. Title shall remain in RAE Systems until Buyer has made payment in full in accordance with the terms hereof.

If in the judgment of RAE Systems, the financial condition of Buyer at any time does not justify continuance of product or delivery on terms of payment above specified, RAE Systems may require special payment terms or deny credit. If Buyer becomes insolvent or bankruptcy proceedings are instituted against Buyer or Buyer makes an assignment for the benefit of its creditors, any such event shall be deemed a material default, entitling RAE Systems to cease performance under this order and to avail itself of all legal or equitable remedies it may have against Buyer. In the event of a default by Buyer under the terms of this contract, and the matter is placed in the hands of an attorney for collection, or suit is brought at law, or in equity, to enforce the provisions herein, the Buyer agrees to pay a reasonable attorney's fee together with costs in addition to the amount due under said contract.

4. Delivery: Unless otherwise agreed to in writing by RAE Systems, all transportation shall be at the expense of Buyer. RAE Systems reserves the right to ship products freight collect and to select the means of transportation and routing. Unless otherwise advised, RAE Systems will insure to full value of the Product or declare full value to the transportation company at the time of delivery and all such freight and insurance costs shall be for Buyer's account. Risk of loss or damage shall pass to Buyer upon delivery of the products to the transportation company at the FOB point. Confiscation or destruction of, or damage to products shall not release, reduce or in any way affect the liability of Buyer. Buyer, at its expense, shall fully insure products against all loss or damage until RAE Systems has been paid in full. Any and all taxes levied on or with respect to products after delivery to the transportation company, including without limitation, taxes levied on or assessed to RAE Systems by reason of its retention of title, shall be paid by Buyer provided, however, in the event RAE Systems, in its sole discretion, chooses to pay such taxes, then Buyer shall reimburse RAE Systems in full upon demand. All products must be inspected upon receipt and claims should be filed with the transportation company when there is evidence of damage, either concealed or external. As used in the clauses appearing herein or attached hereto, delivery shall occur when products are delivered at the FOB point, which shall be the point of manufacture or such other place as RAE Systems shall specify in writing.

Shipping dates are approximate and are based upon prompt receipt of all necessary information from Buyer. RAE Systems shall not be liable for delay in delivery or non delivery, due to causes beyond RAE Systems reasonable control, including but not limited to acts of God, acts of



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Buyer, acts of civil or military authority, war, riots, priorities, fires, strikes, lockouts, delays in transportation and inability due to causes beyond RAE Systems reasonable control to obtain necessary labor, materials, manufacturing facilities, or compliance with any law, regulation or order, whether such circumstances or causes have been remedied. RAE Systems will make its best efforts and Buyer shall accept performance. RAE Systems reserves the right, in its sole discretion, to allocate inventories and current production and substitute suitable materials when, in its opinion, such allocation or substitution is necessary due to any such circumstances or causes. No penalty clause of any kind shall be effective.

5. Acceptance Procedures: RAE Systems' will conduct standard Acceptance Procedures to confirm compliance with Buyer's order. Procedure includes verification of model number and serialized inventory, power-up test confirmation; instrumentation calibration and diagnostics verification. Any requested changes to the acceptance procedures require separate price quotation.

6. Termination: All orders are firm and non cancelable. Buyer is responsible for the full price of products as ordered. Termination by mutual agreement is subject to the following conditions: (a) Buyer will be responsible for the full price of products as ordered. Termination by mutual agreement is subject to the following conditions: (a) Buyer will pay for all products which are completely manufactured and allocable to Buyer at the time of RAE Systems receipt of notice of termination; (b) Buyer will pay all costs which have been incurred by RAE Systems with regard to products which have not been completely manufactured at the time of RAE Systems receipt of notice of termination, plus a pro rata portion of normal profit on the contract using RAE Systems standard accounting practices. To reduce termination charges, RAE Systems shall divert completed parts, material or work-in-process from terminated contracts to the Buyers whenever in RAE Systems sole discretion, it is practical to do so.

7. Limited Warranty: RAE Systems product warranty is incorporated as part of the Product Operating and Service manual supplied with individual product shipment. The product warranty applies to the original owner purchased directly from RAE Systems or an authorized RAE Systems Reseller and does not extend to any damage or failure which results from alteration, accident, theft, misuse, abuse, abnormal use, improper or unauthorized repairs or improper maintenance. RAE Systems neither assumes nor authorizes any other firm or person to assume on RAE Systems behalf any liability in any way connected with the sale of RAE Systems products. The sole and exclusive remedy in the event of any breach of the foregoing warranty is to return products to RAE Systems with delivery or postage prepaid for credit.

THIS EXPRESS WARRANTY SHALL EXTEND TO ORIGINAL BUYER ONLY AND NOT TO BUYER'S CUSTOMERS OR BUYER'S FOREIGN LOCATIONS AND, EXCEPT FOR THE WARRANTY OF TITLE, IT IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. SELLER'S LIABILITY UNDER THE WARRANTY PROVIDED HEREIN EXCLUSIVE OF INSURANCE PROCESS SHALL BE LIMITED TO A REFUND OF PURCHASE PRICE.

8. Damages and Liability: RAE Systems liability for damages shall not exceed the amount RAE Systems actually receives for the Product furnished, or to be furnished, or services rendered, or to be rendered which is the subject of claim or dispute, and in no event shall RAE Systems be liable for consequential damages, or liability to third parties for bodily injury.

9. Disputes: All disputes under any contract concerning products not otherwise resolved between RAE Systems and Buyer shall be resolved in a court of competent jurisdiction for the location of RAE Systems place of business fulfilling the order, and in no other place. Provided that, in RAE Systems sole discretion, such action may be heard in some other place designated by RAE (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in an action. Buyer agrees to appear in any such action and consent to the jurisdiction of such court upon written notice. No action, regardless of form, arising out of, or in any way connected with, the products furnished or services rendered by RAE Systems, may be brought by Buyer more than one (1) year after the cause of action has accrued.

10. Patents: Buyer shall hold RAE Systems harmless against any expense, damage, costs or loss resulting from any suit or proceeding brought for infringement of patents, or trademarks arising from compliance with Buyer's design, specifications or instructions.

Except as otherwise provided above, RAE Systems shall defend any suit or proceeding brought against Buyer to the extent the same is based upon a claim that any product, or any part thereof, delivered to Buyer under this order constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at RAE Systems expense) for the defense of same, and RAE Systems shall pay all damages and costs awarded therein against Buyer. In case said product, or any part thereof, is in such suit held to constitute infringement and the use of said product or part is enjoined, RAE Systems shall, at its own option and expense, either (i) procure for Buyer the right to continue using said product or part, (ii) replace said product with a comparable non-infringement product, (iii) modify said product so it becomes non-infringing; or (iv) remove said product and refund to Buyer the actual cost of said product paid to RAE Systems by Buyer. The foregoing states the entire liability of RAE Systems for any patent infringement by the said product or any part thereof.

The sale of any product or products by RAE Systems pursuant to this order does not convey to Buyer any license, by implication, estoppel, or otherwise, under patent claims or right of RAE Systems covering said product or products, or any combination with or without other devices or elements. With the exception of designs furnished by Buyer, all patent rights, titles, licenses, royalties, copyrights, trade marks, trade names, including disclosures, and interests in any invention utilized in the performance of this contract, shall remain the exclusive property of RAE Systems, agreements to the contrary must be in writing signed by RAE Systems' authorized representatives.

11. Compliance with Laws: RAE Systems represents that with respect to the production of the products or the performance of the services covered by this order, RAE Systems will fully comply with all applicable federal, state and local laws including without limitation, all requirements of the Fair Labor Standards Act of 1938, as amended. RAE Systems is an Equal Opportunity Employer. It does not discriminate



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in any phase of the employment process against any person because of race, color, creed, religion, national origin, sex, age, veteran or handicapped status. The Equal Opportunity Certificate, which is mailed annually to all vendors, is hereby incorporated into this contract by reference.

12. Assignment: Buyer shall not assign this order or any interest therein or any rights hereunder without the prior written consent of RAE Systems.

13. Changes: Upon written acceptance of RAE Systems, Buyer may make changes within the scope of this order in specifications, drawings, or type of products ordered or in the time or place of delivery or order quantity. Engineering charges for the specification changes will be quoted under a separate order. Reduction in order quantities and/or extension or delay of scheduled shipment dates will be subject to price adjustment as determined by RAE Systems and agreed to by the Buyer. RAE reserves the right to reject such changes and thus the original order quantities, shipment dates, and prices shall remain in effect.

14. Government Contracts: Unless otherwise stated by reference on the face hereof, all orders are considered commercial sales regardless of government contract or subcontract references. RAE Systems pricing and production and shipment commitments shall be based on published price lists and RAE Systems internal accounting and production allocation procedures which shall be applied equitably to all customers as determined by RAE Systems. RAE Systems warrants that such prices and allocations that are made under such government contracts are the same as would have been made to RAE Systems most favored customer for the same products or services under identical terms of sale including death, resulting from RAE Systems performance shall be determined in accordance with applicable law.

RAE SOFTWARE LICENSE

1. Grant of License. In consideration of payment of the License Fee, which is a part of the price paid for this product as evidenced by the payment receipt (the Receipt), RAE, hereby, grants to the Licensee, a nonexclusive right to use and display RAE's SOFTWARE. The License granted covers all users on the above-mentioned SOFTWARE. RAE reserves all rights not expressly granted to Licensee.

2. Ownership of the software. As the Licensee, you own the magnetic or other physical media on which the SOFTWARE is originally or subsequently recorded or fixed, but RAE retains the title and ownership of the SOFTWARE and all subsequent copies of the SOFTWARE, regardless of the form or media in or on which the original and other copies may exist. This License is not a sale of the original SOFTWARE or any copy, thereof.

3. Copy Restrictions. This SOFTWARE and the accompanying written materials are copyrighted. Unauthorized copying of the SOFTWARE, including SOFTWARE that has been modified, merged or included with other software, or the written materials provided herewith, is expressly forbidden. You may be held legally responsible for any copyright infringement that is caused or encouraged by your failure to abide by the terms of this License. Subject to these restrictions, and to the extent the SOFTWARE is not copy-protected, you may make one copy of the SOFTWARE solely for backup and archival purposes. Copyright notices must be posted on any and all reproduced copies.

4. Use Restrictions. As the Licensee, you may physically transfer the SOFTWARE from one computer to another provided the SOFTWARE is used on only one computer at a time. You may not electronically transfer the SOFTWARE from one computer to another. You may not distribute copies of the SOFTWARE or accompanying written materials to others. You may not modify, adapt, translate, reverse engineer, de-compile, disassembly, or create derivative works based on the SOFTWARE or the written materials without the prior written consent of RAE.

5. Transfer Restrictions. The foregoing License to use the SOFTWARE is granted only to you and may not be transferred, except a transfer of all your rights, title and interest in and to the License to another person upon that person's agreement to abide by the terms and conditions of the Agreement. In no event may you transfer, assign, rent, lease, sell or otherwise dispose of the SOFTWARE on a temporary or permanent basis except as expressly provided herein. All other attempts to transfer your License under this Agreement are void.

6. Upgrade Policy. RAE may create, from time to time, upgraded versions of the SOFTWARE. At its option, RAE will make such upgrades available to Licensee and transferees who have paid the upgrade fee, if any, and returned the Registration Card to RAE.

7. Termination. This License is effective until terminated. This License will terminate automatically without notice from RAE if you fail to comply with any provision of this License. Upon termination, you agree to destroy, delete or purge the written materials and all copies of the SOFTWARE, including modified copies, if any.

8. Disclaimer of Warranties. The SOFTWARE and accompanying materials (including the user's manual) are provided as is without warranty of any kind including the implied warranties of merchantability and fitness for a particular purpose, even if RAE has been advised of that purpose. Further RAE does not warrant, guarantee, or make any representation regarding the use, or the results of the use, of the SOFTWARE or written materials in terms of correctness, accuracy, reliability, current revision, or otherwise. RAE specifically does not warrant the software after you assume the operation. If the SOFTWARE or written materials are defective, you and not RAE or its dealers, distributors, agents, or employees, assume the entire risk and costs of all necessary servicing, repair, or correction, except as stated in paragraph (9) below.

9. Defective Disks. As the only warranty under this Agreement, RAE warrants, to the original Licensee only, that the disk(s) on which the SOFTWARE is recorded is free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from



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the date of delivery as evidenced by a copy of the Receipt. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply.

10. Replacement of Defective Disks. RAE's entire liability and the original Licensee's exclusive remedy under this Agreement are at RAE's option, to either (a) return of payment as evidenced by a copy of the Receipt, or (b) replacement of the disk that does not meet RAE's limited warranty and which is returned to RAE with a copy of the Receipt. If failure of the disk has resulted from accident, abuse, or misapplication, RAE will have no responsibility to either replace the disk or refund payment. Any replacement disk will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. This warranty gives you limited, specific legal rights. You may have other rights, which vary from state to state.

11. No Right to Rely. No oral or written information or advice given by RAE, its dealers, distributors, agents or employees will create a warranty or in any way increase the scope of RAE's obligations under this agreement, and you may not rely on any such information or advice.

12. Limitation of Liability. Neither RAE nor anyone else who has been involved in the creation, production, or delivery of this product will be liable for any direct, indirect, consequential or incidental damages (including damages for loss of business profits, business interruption, loss of business information, possibility of such damages). Some states do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply.

13. U.S. GOVERNMENT RESTRICTED RIGHTS. The SOFTWARE and documentation is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable. Contractor/manufacturer is RAE Systems Inc., 1339 Moffett Park Drive, Sunnyvale, CA 94089.

14. Governing Law. This Agreement is governed by the laws of the State of California.

Authorized By: